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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,690	02/27/2002	Jorge Enrique Villa	1015.0100	6417

23717 7590 10/20/2004

LAW OFFICES OF BRIAN S STEINBERGER  
101 BREVARD AVENUE  
COCOA, FL 32922

EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/084,690

Applicant(s)

VILLA, JORGE ENRIQUE

Examiner

Chapman E Jeanette

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 21-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-36 is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 21 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 22 and 26-29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Patent draw'g w/ annotations.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 21, 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over ~~Qualline~~ <sup>Qualline</sup> (4955166) <sup>(Qu)</sup> in view of Lanni (3164111) and Gordon (3320969).

Qualline discloses a catastrophic event survival structure comprising a concrete outer shell comprising:

- a generally spherical polyhedron geometry;
- at least one entry door way 56 configures in sealing engagement with the at least one open section to provide releasable access to the closed interior space;
- handle/rod means 60/66 spaced and secured to the concrete shell.

Qualline lacks the monolithic outer shell and the reinforcement member embedded therein. Gordon shows the monolithic inner and outer shell 10 and 18; the inner shell is a mold surface for the outer shell.

Lanni discloses the spherical concrete outer shell with reinforcement members embedded in concrete; the separate longitudinal bars arranged in a cage configuration laying in the shell are substantially embedded throughout the shell. See figures 7 and 9.

Lanni also discloses the legs (support stand) and concrete footers(see fig 1 and annotations) on the bottoms of each leg; the legs engage the survival structure and are

configured to maintain said monolithic outer shell a distance above a structure supporting surface. This supporting surface may be below ground. See annotations on patent copy. The claims do not recite support stand above ground. It would have been obvious to one of ordinary skill in the art to modify QU to include the outer shell construction and the reinforcement members order to make a stronger shell capable of withstanding impact and being firmly supported as shown by the two secondary references above.

The handles are rods are not secured through the outer shell; but this method of joining the handle to the concrete outer shell is viewed as an alternative method. One of ordinary skill in the art would have fixed the handle to the shell by any means to ensure the structure may operate as intended.

Claims 22 and 26-29 are objected to as depending upon a rejected claim but would be considered as allowable if amended to include the base claim and any intervening claims.

Claims 30-36 are allowable over the prior art of record.

Arguments with respect to the above rejected claims have been considered but are not persuasive. Applicant's own specification page 17 discusses using the shelter in a wide variety of configurations including below ground, at the ground, and in an above-ground elevation without departing from the present invention. No criticality is discussed in placing the shelter in above ground. Placing the shelter above ground is within the scope of the cited prior art. Further, claim 1 does not recite placing the shelter "above a ground surface". Claim 1 recites placing the shell "above a survival

structure-supporting surface". The recited general location of the surface could be any location above, at or below the earth or ground surface.

Gordon's disclosure is not bodily incorporated into QU but is cited for its teaching of the monolithic structure.

Lanni disclosure is also not bodily incorporated into QU but is cited for its teaching of reinforcement member, legs and footings.

By applicant's own disclosure, these shelters may exist above, below or at the ground surface. They overlap in design and content though there uses vary. The obviousness is found in the overlapping structure of the shelters though they are employed for different purposes. One of ordinary skill in the art would have appreciated the use and would have employed any structure needed to fulfill the intended purpose and function of the shelter.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jec

  
Jeanette Chapman  
Primary Examiner

(Drawing)  
PATENT COPY w/ANNOTATIONS

Jan. 5, 1965

D. G. LANNI  
BOMB SHELTER

3,164,111

Filed July 13, 1962

5 Sheets-Sheet 1

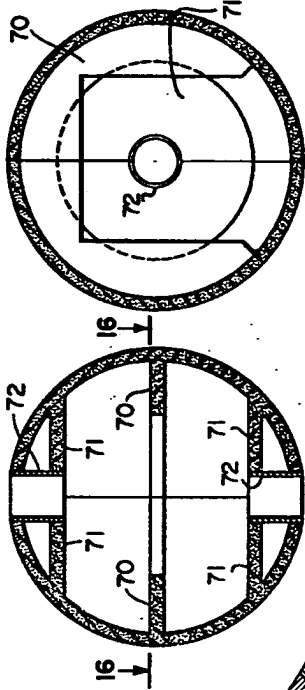


FIG. 16

FIG. 15

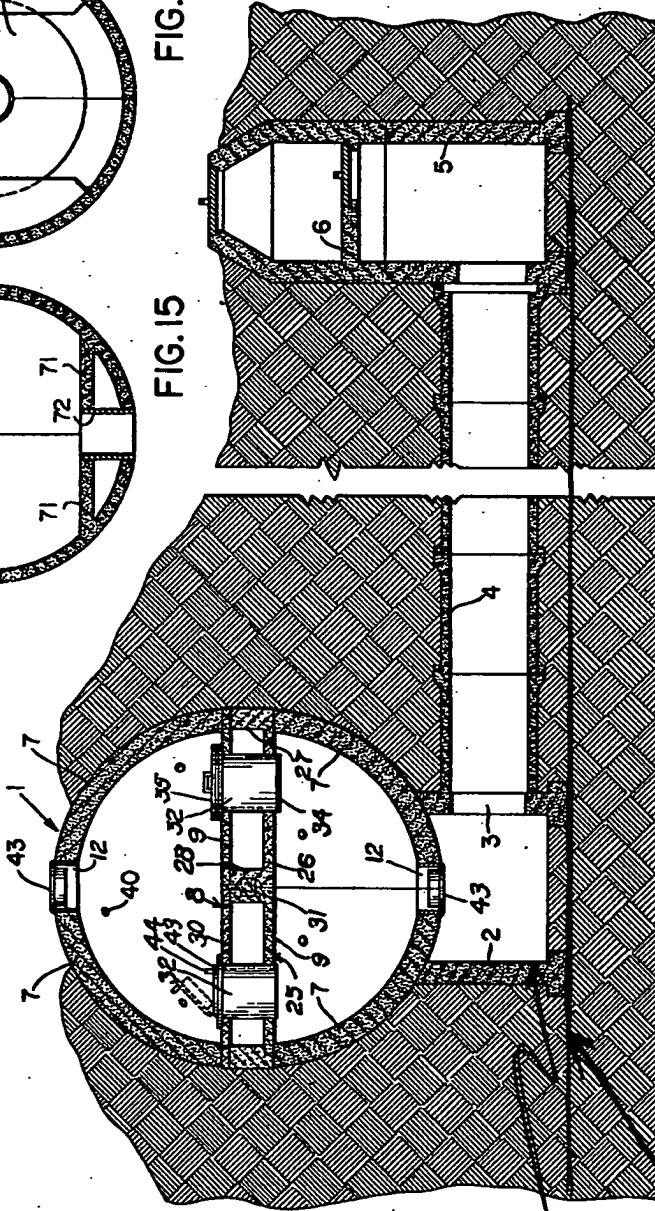


FIG. 1

concrete  
footers

Structure  
Supporting surface  
(below ground)

PATENT COPY w/ANNOTATIONS